

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

CHARLES RUSSELL RHINES,

Plaintiffs

vs.

SOUTH DAKOTA DEPARTMENT OF
CORRECTIONS and MIKE LEIDHOLT,
Secretary, South Dakota Department of
Corrections, and DARIN YOUNG IN HIS
CAPACITY AS WARDEN OF THE SOUTH
DAKOTA STATE PENITENTIARY,

Defendants.

App. No. 49 CIV 19 2940

**APPELLANT'S
DOCKETING STATEMENT**

Charles Russell Rhines, by and through his counsel of record, hereby submit Appellants' Docketing Statement as follows:

Section A.

TRIAL COURT

1. The circuit court from which the appeal is taken: **Second Judicial Circuit.**
2. The county in which the action is venued at the time of the appeal: **Minnehaha County.**
3. The name of the trial judge who entered the decision appealed: **The Honorable Jon C. Sogn.**

PARTIES AND ATTORNEYS

4. Identify each party presently of record and the name, address, and phone number of the attorney for each party:

Charles Russell Rhines

Daniel R. Fritz (2390)
Timothy R. Rahn (4871)
Ballard Spahr LLP
101 S. Reid St., Suite 302
Sioux Falls, South Dakota 57103
(605) 978-5205

Caroline Heller
Greenberg Traurig, LLP
200 Park Avenue
New York, NY 10166
(212) 801-2165

South Dakota Department of
Corrections and Mike Leidholt,
Secretary, South Dakota Department
of Corrections

Paul S. Swedlund
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Telephone: 605-773-3215
Paul.swedlund@state.sd.us

Section B.

TIMELINESS OF APPEAL

1. The date the judgment or order appeal from was signed and filed by the trial court:
Signed and filed on October 31, 2019.
2. The date notice of entry of the judgment or order was served on each party: **October 31, 2019.**
3. State whether either of the following motions was made:
 - a. Motion for judgment n.o.v., SDCL 15-6-50(b): ☐ Yes ☒ No
 - b. Motion for new trial, SDCL 15-6-59: ☐ Yes ☒ No

NATURE AND DISPOSITION OF CLAIMS

4. State the nature of each party's separate claims, counterclaims or cross-claims and the trial court's disposition of each claim (e.g., court trial, jury verdict, summary judgment, default judgment, agency decision, affirmed/reversed, etc.).

On October 22, 2019, Rhines filed an action in the Circuit Court for the Second Judicial Circuit seeking injunctive and declaratory relief to enforce his statutory right under South Dakota law to be executed by the manner he chose. Rhines's Complaint alleges four causes of action. The First Cause of Action, Violation of the Right to Choose the Manner of Execution Provided by Law at the Time of Sentence, alleges that, in enacting SDCL § 23A-27A-32.1, the State of South Dakota created a state statutory right that entitles Rhines to be executed in the manner provided by South Dakota law at the time of the Rhines's conviction or sentence. The manner of

execution provided by South Dakota law at the time of Rhines's conviction and sentence was, in relevant part, "by the intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent and continuing the application thereof until the convict is pronounced dead by a licensed physician according to accepted standards of medical practice." SL 1984, ch 181, codified at SDCL § 23A-27A-32 (1984.).

The Second Cause of Action, Deprivation of Due Process, alleged that in enacting SDCL § 23A-27A-32.1, the State of South Dakota created life and liberty interests that entitle Rhines to be executed in the manner provided by South Dakota law at the time of the Rhines's conviction or sentence. (Compl. ¶¶ 51-54.) Rhines's life and liberty interests in being executed in this manner are protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Due Process Clause of Article Six, Section 2 of the South Dakota Constitution.

The Third Cause of Action, Injunctive Relief, and the Fourth Cause of Action, Declaratory Judgment, sought injunctive and declaratory relief: (1) Staying Rhines's execution pending adjudication of this action; (2) declaring that pentobarbital is neither an ultra-short-acting barbiturate nor a chemical paralytic agent; (3) enjoining the DOC from executing Rhines with pentobarbital; and (4) ordering that the DOC shall execute Rhines only with an ultra-short-acting barbiturate, to wit, sodium methohexital or sodium thiopental, in combination with a chemical paralytic agent.

In light of Mr. Rhines's scheduled execution, he also filed an application for a preliminary injunction, temporary restraining order, or stay of execution to prohibit the DOC from executing him with pentobarbital and to order that the DOC shall execute Rhines only with an ultra-short-acting barbiturate in combination with a chemical paralytic agent.

On October 31, 2019 the Honorable Jon Sogn entered an Order denying the application for preliminary injunction and stay of execution.

5. Appeals of right may be taken only from final, appealable orders. See SDCL 15-26A-3 and -4.

a. Did the trial court enter a final judgment or order that resolves all of each party's individual claims, counterclaims, or cross-claims?

___ Yes ___X___ No

*to the extent this is not a final order, and instead only an order denying preliminary injunction and stay of execution, this Court has jurisdiction under SDCL 15-26A-3(5). See *Hedlund v. River Bluff Estates LLC*, 2018 S.D. 20 (S.D. 2018)

b. If the trial court did not enter a final judgment or order as to each party's individual claims, counterclaims, or cross-claims, did the trial court make a determination and direct entry of judgment pursuant to SDCL 15-6-54(b)?

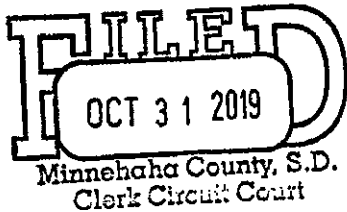
___ Yes ___X___ No

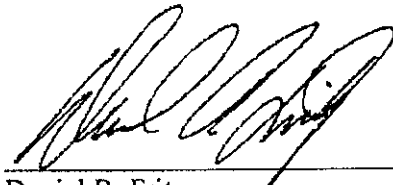
6. State each issue intended to be presented for review. (Parties will not be bound by these statements)

- a. Whether the trial court erred in denying application for preliminary injunction and stay of execution?
 - b. Whether the trial court erred in concluding the claims are barred by *res judicata*?
 - c. Whether Mr. Rhines has shown a strong likelihood of success on the merits of his causes of action?
7. Attach a copy of any memorandum opinion and findings of fact or conclusions of law supporting the judgment or order appealed from. *See* SDCL 15-26A-4(2).
- a. *See* attached Memorandum Opinion and Order Denying Application for Preliminary Injunction and Stay of Execution

Dated at Sioux Falls, South Dakota, this 31 day of October, 2019.

BALLARD SPAHR LLP



By: 

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Attorneys for Charles Russell Rhines

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL DISTRICT

CHARLES RUSSELL RHINES,

 Plaintiff,

vs.

SOUTH DAKOTA DEPARTMENT OF
CORRECTIONS, MIKE LEIDHOLT,
SECRETARY, SOUTH DAKOTA
DEPARTMENT OF CORRECTIONS, and
DARIN YOUNG IN HIS CAPACITY AS
WARDEN OF THE SOUTH DAKOTA
STATE PENITENTIARY.

Defendants.

49CIV19-002940

NOTICE OF APPEAL

TO: Jason R. Ravnsborg, Attorney General and Paul S. Swedlund, Assistant Attorney General, Attorneys for Defendants South Dakota Department of Corrections, Mike Leidholt, Secretary, South Dakota Department of Corrections, and Darin Young, Warden of the South Dakota State Penitentiary, 1302 East Highway 14, Suite 1, Pierre, SD 57501-8501:

NOTICE IS HEREBY GIVEN that the Plaintiff, Charles Russell Rhines, hereby appeals to the South Dakota Supreme Court the whole of the Order Denying an Application for a Temporary Restraining Order, Preliminary Injunction, and Stay of Execution in the above-entitled matter, which was signed by the Honorable Jon C. Sogn, Judge of the Second Judicial Circuit in and for Minnehaha County on October 31, 2019, with the Notice of Entry of the same being served on Plaintiffs of Courts on October 31, 2019, and from the whole of the record in this action.

Dated this 31st day of October, 2019.

BALLARD SPAHR LLP

By: _____

Daniel R. Fritz

Timothy R. Rahn

101 South Reid Street, Suite 302

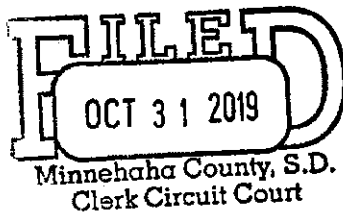
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Attorneys for Charles Russell Rhines



CERTIFICATE OF SERVICE

I, Daniel R. Fritz, hereby certify that on this 31st day of October, 2019, a true and correct copy of the foregoing *Notice of Appeal* in the above-entitled matter was provided via first class mail, postage prepaid, and via e-mail to the following named persons at their last known address:

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Paul S. Swedlund
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Attorneys for Defendant

BALLARD SPAHR LLP

By: _____

Daniel R. Fritz

